

Message Text

PAGE 01 STATE 239669

61

ORIGIN L-03

INFO OCT-01 EA-07 ISO-00 JUSE-00 ERDA-05 SS-15 EB-07

COME-00 TRSE-00 PM-04 ACDA-05 CIAE-00 INR-07 IO-10

NSAE-00 NSC-05 NRC-05 OES-03 DODE-00 FEA-01 PA-01

USIA-06 PRS-01 SP-02 OMB-01 /089 R

DRAFTED BY L/OES:RJBETTAUER:MJR

APPROVED BY OES:MRKRATZER

EA/J - MR. SMITH

ERDA - MR. BRUSH

L - MR. SANDLER

JUSTICE - MR. FRAKE (SUBS)

JUSTICE - MR. RISTAU (INFO)

----- 034074

R 081425Z OCT 75

FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

LIMITED OFFICIAL USE STATE 239669

E.O. 11652: N/A

TAGS: NERG, JA

SUBJECT: ENRICHED URANIUM TAX

REF: (A) TOKYO 9504; (B) STATE 187599; (C) STATE
202636; (D) TOKYO 13234

1. SUMMARY: THIS TELEGRAM REPORTS ON MEETINGS OCTOBER 2
AND OCTOBER 3 CONCERNING TAX ON JAPANESE ENRICHED URANIUM
AND REQUESTS YOU TO REVIEW MATTER WITH GOJ.

2. ON OCTOBER 2, ACTING ASSISTANT SECRETARY KRATZER (OES),
BETTAUER (L) AND BRUSH (ERDA) MET WITH MR. GENE JOYCE,
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 02 STATE 239669

ATTORNEY REPRESENTING THE CITY OF OAK RIDGE IN THE CITY'S
EFFORTS TO TAX JAPANESE ENRICHED URANIUM. DURING THE DIS-
CUSSION, ALL PARTICIPANTS WERE CAREFUL NOT TO MAKE ANY
POLITICAL OR LEGAL COMMITMENTS. JOYCE REVIEWED THAT THE

CITY'S LEGAL JUDGMENT WAS THAT THE PROPERTY WAS TAXABLE. MR. KRATZER (OES) INDICATED SYMPATHY FOR THE CITY'S FINANCIAL PROBLEMS, BUT NOTED THE DEPARTMENT'S CONCERNS RELATED BOTH TO USG-GOJ RELATIONS AND, MORE GENERALLY, TO USG POSITION AS SUPPLIER OF ENRICHMENT SERVICES. ALTHOUGH JOYCE ASKED FOR COMMENTS ON THE MERITS OF UNDERLYING LEGAL ISSUES, WE AVOIDED SUCH COMMENTS. THE MAIN FOCUS OF THE DISCUSSION WAS ON RECENT ATTEMPTS BY ROANE COUNTY AND OAK RIDGE TO ATTACH ENRICHED URANIUM.

3. JOYCE INDICATED THAT CITY BELIEVED IF URANIUM CHANGED

LOCUS OR TITLE, THE CHANCES OF ULTIMATELY COLLECTING ANY TAXES DUE WOULD BE MUCH REDUCED. THUS, THEY TRIED TO OBTAIN COMMITMENTS FROM ERDA AND FROM JAPANESE UTILITIES THAT, WITH RESPECT TO URANIUM IN AN AMOUNT SUFFICIENT TO COVER POSSIBLE TAXES BY THE CITY AND COUNTY (APPROXIMATELY \$20 MILLION), SUCH URANIUM WOULD NOT BE MOVED OR ITS TITLE CHANGED. SUCH COMMITMENT WAS NOT FORTHCOMING.

4. SEVERAL WEEKS AGO, ACCORDING TO JOYCE, ROANE COUNTY FILED ATTACHMENT PROCEEDINGS, BUT THE ATTACHMENT WAS QUASHED BECAUSE OF A TECHNICAL DEFECT IN SERVING THE PAPERS WITH THE CASE BEING HELD OPEN PENDING NEW SERVICE. AS A SEPARATE MATTER, HE INDICATED THAT OAK RIDGE HAD, SEVERAL DAYS AGO, SOUGHT ITS OWN ATTACHMENT OF ENRICHED URANIUM IN AN AMOUNT SUFFICIENT TO COVER THE PAYMENT OF TAXES IN ORDER TO ENSURE THAT COLLATERAL REMAINED IN OAK RIDGE.

5. JOYCE INDICATED THAT FOR HIS PART, HE FELT THAT OAK RIDGE AND PROBABLY ALSO ROANE COUNTY, WOULD ACCEPT CHANGE IN STATUS OF MATERIAL (E.G. TRANSFER OF TITLE GOJ) WHICH WOULD AVOID TAX ON URANIUM FOR CY 1976 AND BEYOND. AS A TECHNICAL MATTER, THE PROPERTY WOULD BE SUBJECT TO TAX IF IT REMAINS IN TENNESSEE ON JANUARY 1, 1976, UNLESS TITLE IS TRANSFERRED. LEAVING ASIDE WHETHER THE COURTS ULTIMATELY UPHOLD THE IMPOSITION OF TAX FOR 1974 AND 1975, JOYCE ACKNOWLEDGED IT WOULD BE UNREASONABLE FOR JAPANESE TO RISK LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 03 STATE 239669

TAXES ALSO FOR 1976. JOYCE, THEREFORE, INDICATED THAT THERE WAS SOME POSSIBILITY OF A "COMPROMISE" TO DEAL WITH THE IMMEDIATE PROBLEM OF ENSURING THAT JAPANESE PROPERTY IS NOT SUBJECT TO 1976 TAXES WHILE AT SAME TIME NOT DEPRIVING THE CITY AND COUNTY OF COLLATERAL TO ENSURE PAYMENT OF POTENTIAL TAXES. SUCH A COMPROMISE COULD WORK AS FOLLOWS: ALL PARTIES WOULD AGREE TO ATTACHMENT OF ONLY A SUFFICIENT AMOUNT OF JAPANESE URANIUM TO COVER PAYMENT OF POTENTIAL TAXES (E.G., \$20 MILLION WORTH). SINCE THE ATTACHED URANIUM WOULD NOT BE AVAILABLE FOR DISPOSITION, THE ORDER OF ATTACHMENT WOULD PROVIDE THAT IT WOULD NOT BE SUBJECT TO NEW TAXES. THE REMAINING AMOUNT OF JAPANESE URANIUM

WOULD HAVE ITS TITLE TRANSFERRED FROM UTILITIES TO GOJ (OR TO ERDA) IN ORDER TO AVOID FUTURE TAX LIABILITY. THE CITY AND COUNTY WOULD AGREE NOT TO QUESTION THE LEGALITY OF THE TECHNICAL SWITCH IN TITLE FOR PURPOSES OF TAX AVOIDANCE.

6. UNDER AN ALTERNATE IDEA, THERE WOULD BE NO ATTACHMENT. INSTEAD, JAPANESE UTILITIES WOULD AGREE AND THE COURT ORDER WOULD REFLECT THE FACT THAT SUFFICIENT AMOUNT OF JAPANESE URANIUM WOULD REMAIN IN OAK RIDGE TO COVER POSSIBLE TAX,

AND THAT THIS AMOUNT WOULD NOT BE SUBJECT TO A NEW TAX. THE TITLE OR LOCUS OF THE REMAINING URANIUM WOULD BE TRANSFERRED. THE PROBLEM WITH THIS ALTERNATIVE WAS THAT JOYCE WAS NOT CERTAIN WHETHER, WITHOUT TECHNICAL DEVICE OF ATTACHMENT ON URANIUM HELD IN OAK RIDGE, IT WOULD LEGALLY BE POSSIBLE TO AVOID 1976 TAXES.

7. YET ANOTHER ALTERNATIVE PUT FORWARD WAS THE TRANSFER OF TITLE OF ALL JAPANESE URANIUM TO GOJ BEFORE JANUARY 1, 1976, WITH AGREEMENT BY GOJ TO PUT A SUFFICIENT AMOUNT OF URANIUM IN ESCROW TO COVER PAYMENT OF POTENTIAL TAXES, SHOULD THE COURTS ULTIMATELY DECIDE AGAINST THEM. WHILE THERE IS SOME POSSIBILITY THAT THE CITY AND COUNTY MIGHT ACCEPT SUCH A DEAL, WE ARE NOT SANGUINE THAT GOJ WOULD.

8. JOYCE APPEARED TO BELIEVE THAT THE LOCAL COUNSEL OF THE JAPANESE UTILITIES IN OAK RIDGE (KRAMER) HAD DIFFICULTY COMMUNICATING WITH THE UTILITIES AND GOJ. FURTHER, JOYCE LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 04 STATE 239669

THOUGHT IDEAS OUTLINED ABOVE FOR THE AVOIDANCE OF 1976 TAXES HAD NOT BEEN COMMUNICATED TO THE JAPANESE, ALTHOUGH ERDA OAK RIDGE OPERATIONS OFFICE BELIEVES THAT JAPANESE ARE AWARE OF THESE POSSIBILITIES. JOYCE FELT THAT NONE OF THESE WOULD REQUIRE DEVIATION FROM THE CURRENT CONTRACT SCHEDULE FOR THE DELIVERY OF URANIUM.

9. ON OCTOBER 3, ACTING ASSISTANT SECRETARY KRATZER (OES), BETTAUER (L), HOYLE (OES), AND SMITH (EA/J), MET WITH MR. KITANO OF TEPCO, MR. MATSUNAGA OF TEPCO, MR. MAKIMOTO AND MR. FUJII OF KANSAI POWER COMPANY, MR. NOMURA OF CHUBU POWER COMPANY, MR. HOSOOKA OF MISUI POWER COMPANY AND MR. OTSUBO OF MISUBISHI INT. CORP., TO DISCUSS PROBLEMS RELATING TO ENRICHED URANIUM TAX.

10. JAPANESE BEGAN BY INDICATING THEIR AMAZEMENT THAT THE MATTER HAD REACHED THE STAGE OF LEGAL PROCEDURES, INCLUDING ATTACHMENT, WITHOUT PRIOR WARNING TO THEM OR PRIOR NEGOTIATION. THEY SAID IT UNUSUAL THAT MATTERS TAKEN TO COURT SO PRECIPITATELY. KRATZER RESPONDED THAT WE UNDERSTOOD THEIR

CONCERN BUT NOTED THAT COUNTY AND CITY OFFICIALS HAD ACTED IN ACCORDANCE WITH WHAT THEY CONSIDERED ESTABLISHED PROCEDURES.

11. JAPANESE REVIEWED LEGAL SITUATION. THEY SAID KRAMER LAW FIRM WAS ARGUING IN LOCAL LEGAL PROCEDURES THAT IMPOSITION OF THE TAX INTERFERES WITH INTERSTATE COMMERCE AND THEREFORE SHOULD NOT BE PERMITTED. HOWEVER, JAPANESE HAD IMPRESSION THAT KRAMER LAW FIRM HAS LITTLE CONFIDENCE OF WINNING ON THIS ARGUMENT. AS SECOND MATTER, THEY SAID KRAMER LAW FIRM HAD SUGGESTED ALTERATION OF CONTRACTS RE-

LATING TO STORAGE OF URANIUM SO THAT MATERIAL COULD BE REMOVED OR TITLE TRANSFERRED TO ERDA IN TIME TO AVOID IMPOSITION OF 1976 CY TAX. MOST IMPORTANT, JAPANESE SAID WAS POSSIBLE ARGUMENT GROUNDED ON SOVEREIGN IMMUNITY. THEY SAID KRAMER HAD RECOMMENDED THIS ARGUMENT, AND KITANO HAD RAISED THE ARGUMENT WITH MR. MASUTA, DIRECTOR GENERAL OF ENERGY AND RESOURCES, MITI, ON SEPTEMBER 29. HOWEVER, IT NOT CLEAR WHETHER GOJ WILL REQUEST STATE DEPARTMENT TO SUGGEST IMMUNITY SINCE JAPANESE AT MEETING DID NOT KNOW LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 05 STATE 239669

WHAT REACTIONS OF OTHER CONCERNED MINISTRIES WOULD BE. THEY SAID ANOTHER MEETING WITH GOVERNMENT OFFICIALS WAS SCHEDULED FOR OCTOBER 7 IN TOKYO TO PURSUE ISSUE OF POSSIBLE GOJ REQUEST FOR STATE DEPARTMENT SUGGESTION OF SOVEREIGN IMMUNITY.

12. JAPANESE EMPHASIZED THAT THEY REGARDED HEARING BY STATE BOARD OF EQUALIZATION, SCHEDULED FOR NOVEMBER 1, AS CRUCIAL. THEY SAID TAX, ACCORDING TO STATE LAW, MUST BE PAID WITHIN 30 DAYS AFTER DETERMINATION BY STATE BOARD THAT IT IS DUE.

13. WE EXPLAINED THE DEPARTMENT'S PROCEDURE FOR MAKING SOVEREIGN IMMUNITY DETERMINATION. DIPLOMATIC NOTE FROM GOJ WOULD HAVE TO REQUEST SOVEREIGN IMMUNITY AND BRIEFLY STATE GROUNDS. OFFICE OF THE LEGAL ADVISER WOULD THEN OBTAIN VIEWS OF ALL INTERESTED PARTIES, INCLUDING LEGAL MEMORANDA AND POSSIBLY ORAL PRESENTATION. AFTER CAREFUL CONSIDERATION THE LEGAL ADVISER OF DEPARTMENT WOULD MAKE FINAL DECISION. IF A DECISION IS MADE IN FAVOR OF IMMUNITY A LETTER CONTAINING A SUGGESTION OF IMMUNITY IS TRANSMITTED TO DEPARTMENT OF JUSTICE FOR INTRODUCTION IN LEGAL PROCEEDINGS. WE INDICATED THAT WE WERE NOT FULLY CLEAR AS TO THE BEST PROCEDURAL POINT IN THIS CASE AT WHICH A SUGGESTION OF SOVEREIGN IMMUNITY MIGHT BE INTRODUCED -- WHETHER BEFORE THE STATE BOARD OF EQUALIZATION, OR APPEAL, OR IN A FEDERAL ACTION. IN ADDITION, WE INDICATED THAT IF THERE WERE NO OTHER LEGAL IMPEDIMENTS IT WOULD PROBABLY BE POSSIBLE FOR

OFFICE OF LEGAL ADVISER TO COMPLETE ITS PROCEDURES AND COME TO DECISION ON SOVEREIGN IMMUNITY ISSUE WITHIN COURSE OF ONE MONTH.

14. WE ALSO NOTED THAT MOST SUBSTANTIVE ISSUES INVOLVED IN THIS CASE SEEMED TO BE ONES PRIMARILY OF LOCAL LAW, BUT THAT STATE AND JUSTICE DEPARTMENTS WERE KEEPING ISSUES UNDER REVIEW AND THAT, WHILE NO DECISION FOR FEDERAL INTERVENTION IN STATE OR FEDERAL COURT HAS BEEN MADE, WE DID NOT EXCLUDE POSSIBILITY OF SUCH INTERVENTION IF AND WHEN IT DECIDED APPROPRIATE.

15. JAPANESE SAID TOTAL AMOUNT OF TAX NOW CLAIMED BY LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 06 STATE 239669

COUNTY AND CITY OFFICIALS FOR BOTH 1974 AND 1975 UAS ABOUT 15 MILLION DOLLARS.

16. IN DISCUSSING FURTHER METHODS FOR PROTECTING PROPERTY FROM IMPOSITION OF 1976 TAX, KRATZER POINTED OUT THAT OUR INDICATIONS WERE THAT LOCAL OFFICIALS MAY BE READY TO DEVISE A PROCEDURE TO PERMIT NO NEW TAXES TO ACCRUE ON ANY JAPANESE ENRICHED URANIUM IF THEY COULD BE ASSURED THAT COLLATERAL WOULD BE AVAILABLE IN OAK RIDGE IN CASE FINAL DECISION OF COURTS WAS THE TAX WAS PROPER. AT VARIOUS POINTS, THEY SAID THAT THEY HAD SEEN NO SIGNS THAT LOCAL OFFICIALS WOULD BE READY TO COOPERATE AND SEEK A SOLUTION. AT OTHER TIMES, IT APPEARED FROM WHAT THEY SAID THAT THEIR LOCAL COUNSEL MAY HAVE RECEIVED PROPOSALS FROM LOCAL OFFICIALS. NEVERTHELESS, GENERAL IMPRESSION WAS JAPANESE ARE NOT TAKING STEPS TO PROTECT THEIR PROPERTY FROM NEW 1976 TAXES.

17. JAPANESE LEGAL STRATEGY APPEARED TO BE THAT THEY WOULD FIRST PURSUE SOVEREIGN IMMUNITY ARGUMENT, WHICH THEY CONSIDER MOST PROMISING FOR AVOIDING TAX. THEY THOUGHT THAT FALLBACK FROM THIS WOULD BE ALTERING STORAGE CONTRACT IN MANNER TO AVOID 1976 TAXATION ON URANIUM. WE URGED JAPANESE TO PURSUE ALL LEGAL OPTIONS SIMULTANEOUSLY. WE SAID THAT, IF THEY WISHED TO PURSUE SOVEREIGN IMMUNITY GROUNDS, THEY COULD DO THAT WHILE AT SAME TIME TAKING URGENT STEPS TO PROTECT THEMSELVES FROM ADDITIONAL IMPOSITION OF TAX FOR CY 1976. HOWEVER, POINT DID NOT APPEAR TO GET THROUGH.

18. WE REQUEST YOU TO DISCUSS THE PROBLEM WITH APPROPRIATE JAPANESE OFFICIALS. IN PARTICULAR, YOU SHOULD BE SURE THEY UNDERSTAND THE PROBLEM OF POSSIBLE INCREASE OF POTENTIAL TAX LIABILITY IN 1976, AND REPORT TO THEM THAT OAK RIDGE AND ROANE COUNTY MAY BE PREPARED TO WORK OUT METHOD FOR AVOIDING THIS ADDITIONAL LIABILITY, NOTING THAT IT IS CUS-

TOMARY TO PURSUE DIFFERENT ALTERNATIVES SIMULTANEOUSLY.
PLEASE DO NOT DISCUSS SPECIFICS OF OPTIONS SET FORTH IN
PARAS 5-7, 11, 16-17 ABOVE, BUT URGE JAPANESE TO COORDINATE
CLOSELY WITH THEIR TENNESSEE ATTORNEYS. DEPARTMENT IS NOT
ENDORING ANY OF THESE AT THIS TIME, BUT WE WANT TO BE SURE
LIMITED OFFICIAL USE
LIMITED OFFICIAL USE

PAGE 07 STATE 239669

THE JAPANESE UNDERSTAND THE GENERAL SITUATION. ALSO,
DEPARTMENT AND ERDA ARE NOT TAKING A LEGAL POSITION AT THIS
POINT ON THE MERITS OF THE CASE. THIS CABLE DOES NOT DEAL
WITH THOSE ISSUES. WE CONTINUE TO EXPRESS OUR CONCERN
ABOUT THE TAX AND ARE TRYING TO BE OF ASSISTANCE IN MINI-
MIZING ANY POTENTIAL TAX LIABILITY. KISSINGER

LIMITED OFFICIAL USE

<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: URANIUM, TAX LAW, DIPLOMATIC DISCUSSIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 08 OCT 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE239669
Document Source: ADS
Document Unique ID: 00
Drafter: L/OES:RJBETTAUER:MJR
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750350-0450
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197510102/baaaacur.tel
Line Count: 289
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 6
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 16 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 JUL 2003 by MartinML>; APPROVED <29 DEC 2003 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: ENRG, JA, (JOYCE, GENE), (KRATZER), (BETTAUER), (BRUSH)
To: TOKYO
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006